The Art of Mooting: Mooting and the Cognitive Domain

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Abstract

Mooting is modeled principally on appellate advocacy. However, the skill set developed by participating in a moot program – being that necessary to persuade someone to your preferred position – is indispensible to anyone practising law. Developing effective mooting skills in students necessitates the engagement of coaches with an appropriate understanding of the theories underlying mooting and advocacy practice and their interconnection with each other. This article explains the relevance of the *cognitive* domain to mooting performance and places it in context with the *psychomotor* and *affective* domains.

Key Words mooting, Bloom's taxonomy, cognitive domain, law, 3-Dimensional

Introduction

Coaching plays an indispensable and crucial role in the process of preparing mooting teams for competition at all levels. Enabling effective coaching is a key strategic component for any law school seeking to develop a culture of excellence in mooting.

While the development of plausible and meritorious arguments in response to the issues raised in a moot problem is primarily an intellectual exercise, its presentation in competition involves all of the domains *of* human mental activity – *cognitive*, *psychomotor* and *affective*[i]. Each domain has identifiable skills (Anderson & Krathwohl, 2001), which the authors argue are capable of development through targeted practice for a competition mooting team with the aim of excellent performance. The authors' consider, however, that without successfully mastering the

skills of the *cognitive domain* it is unlikely a team would be successful, and that a principal focus of coaching a moot team necessitates an understanding of the theory of learning that underpins cognitive development.

As a learning and teaching function within a law school, mooting should be predicated and structured on supportable principles of learning. Indeed, it is one area of *clinical* training to which Hoffman's observation that *"no doctrine or theory underlies many lawyering skills"* does not apply (Hoffman, 1994, 105): there is ample theory which is closely targeted on the lawyering skills being developed in a successful mooter. The *"stuff"* of lawyering, manifest in the practical skills of mooting, need not be consigned to the cartographical unknowability of Blasi's "[h]*ere there be dragons"* (Blasi, 1995, 316) but can be meaningfully enhanced by the *"appropriation of theory into cognitive apparatus of practitioners"* (for which read students) (Blasi, 1995, 317).

Importantly, coaches should be aware of the impact each domain has on performance. This article explores the theories behind the *art of mooting*, adopting McFarlane's (1992) notion of the relationship between high-level synthesisation and evaluation of knowledge *in performance – i.e.* the fusion of (mental) knowledge and action conceptualized by Webb as *"artistry"* (Webb, 1995). Beyond mere positivist legal explication, the moot demands the "arts" (as Schön would characterise them) of problem framing, of implementation, and of improvisation, *"all necessary to mediate the use in practice of applied* [knowledge] *and technique"* (Schön, 1987, 13). The article analyses these art forms in the context of a discussion and elaboration of the *cognitive domain* and its relevance for coaching a mooting team.

The authors' consideration of the *cognitive domain* is based in the application of a Bloom-based taxonomy of cognitive skills and learning objectives. Cognitive skills have been the subject of considerable research and classification. However, there has been disagreement about the positioning of particular skills, and the extent to which the higher-level skills are independent, or above a threshold operate inter-relationally. While there is recent literature that links all three domains together in the educational context (Hansen, 2008; Rovai *et al,* 2009), a gap exists in the literature as to their relevance to the *art of mooting*. This article begins to fill that gap.

The role of the mooting coach

Mooting is an established mechanism for assessment within many law schools and a mechanism for delivery of essential skills training (Keyes & Whincop, 1997). It also can be used for non-assessment purposes in the context of competition moots that students participate in on a voluntary basis, or as an optional form of assessment in select subjects (Lynch, 1996). The role of the coach, or even the ability to have one, will vary depending on the assessment context – if used for class assessment the ability to have a coach may not be permitted. Where mooting is used for assessment, the marking tools would use a matrix of criteria and standards suitable for a criterion-referenced mode of assessment. The role of the academic in developing the criteria will be crucial and, the authors suggest, benefit from an understanding of the matters the authors will discuss here and in later research. The focus of this article, however, is on the role of the coach in competition mooting, referred to by some authors as *"appellate simulation"* (McDevitt, 2009, 247).

The crucial role played by coaching in any competitive endeavour is readily seen in the salaries commanded by coaches of elite athletes and sporting teams, and the readiness of teams to change coaches when their performance does not meet

reasonable expectations. In the context of mooting in law schools, as in sport[ii], coaching is not merely supervising practice and making useful suggestions based on the coach's own expertise and experience, or providing *answers*. Successful coaching in any activity involves dissecting the activity involved, identifying the skills and attitudes which are the fundamentals of excellent performance, and developing a *coherent* plan for exercises to develop those skills at appropriate stages of preparation.

> In traditional coaching success is achieved when the coach, as an expert puppeteer, orchestrates the actions of players according to his own vision. (Skura, 2007)

Contrary to the idea of coaching described above as "traditional", the description of principles and practices described here approaches the role of coaches as *facilitators* rather than *puppeteers*. The raw materials of a moot team are students who, when competing, are cut free of all strings other than the ideas and practices assimilated from the coaching process, which then become their own resources. These, by necessity, are exercised in an unpredictable environment and must therefore be used flexibly, adapting to the particular circumstances revealed during a moot hearing.

Even if coaches were permitted to write submissions, performance in competition would be compromised if participants had not developed and assimilated the relevant materials and arguments themselves. Assimilation is most effectively achieved under the guidance of a coach who constructs practice experiences conducive to the development of the skills necessary for high-level competition performance. Knowledge by the coach of the three domains will be essential.

The cognitive domain in context

It is tempting to think the *cognitive domain* dominates moot preparation in the form of the intellectual process necessary to create an unassailable argument as to why one party should prevail – *ie* the process of identifying the legal issue/s, researching the extant law and applying it to the factual matrix in the problem. Certainly these intellectual processes are essential to successful mooting. A lack of understanding of the factual and legal information relevant to the problem will inevitably lead to a poor, and equally inevitably embarrassing, performance. However, mooting, like practice at the bar or as a solicitor advocate, is more than just an intellectual process.

The skills associated with successful mooting, or legal practice cover the entire range of domains of human activity: intellectual, physical and emotional. That is to say – full preparation for a mooting campaign requires development of *cognitive* skills (in terms of legal analysis of the moot problem and development of a coherent and sustainable argument); *psychomotor* skills (in terms of the control of physical processes displayed while in competition); and the *affective* domain (involving the psychological and emotional aspects of preparation and competition).[iii]

The presentation of argument in competition, however, is not a sterile intellectual exercise. The preparation for, and participation in, a mooting competition are equally dependent on the physical aspects of oral submissions from the bar table (such as vocal qualities and dynamics, control of nervous habits, government of physical gesture and facial expression); and psychological factors such as personal interactions (including within a team, with the coach and with opposing teams and the Bench), controlling the inevitable anxiety and developing confidence. Mastering these latter domains, however, is inextricably linked to, and builds from, mastery of the *cognitive domain.*

The theoretical foundation: Bloom's (revised and revisited) Taxonomy

The authors' discussion of the *cognitive domain* builds from Dr Benjamin Bloom's seminal work, *Taxonomy of educational objectives: the classification of educational goals: Handbook I: Cognitive Domain* (Bloom *et al,* 1956). The specific levels and their interrelation with each other, however, have been adapted to the specific context of mooting in the light of later modification (by other authors) of Bloom's taxonomy.

Bloom *et al* (1956) described six levels of cognitive activity – know, comprehend, apply, analyse, synthesise and evaluate – with various sub-levels. Each of the higher levels was considered dependent on successful engagement with the lower levels in the hierarchy. In applying Blooms' taxonomy, lower levels must be mastered and mastery demonstrated before embarking on the higher-level skills. However, the lower level skills must be retained throughout, as they remain the basis for the demonstration and implementation of the higher-level skills.

The linear progression of the six levels raised concerns. Other authors questioned the strict requirement of sequential development across the all levels, regarding the first three as sequential and the second three as parallel (Furst, 1994). While not entering into that debate, the authors consider that, at least in the context of the preparation of legal argument, the levels of application and analysis do not function wholly as discrete activities. Applying and analysing the extant law arguably function in tandem or may, we would argue, even be reversed, while the three higher level skills generally function in parallel.

In their 2001 Revised Taxonomy, Anderson and Krathwohl (2001) swapped the positions of evaluation and synthesis (Krathwohl, 2002) and changed terminology. *Remember* replaced *know; understand* replaced *comprehend;* and *create* replaced *synthesis* (Krathwohl, 2002). It is noted that the Revised Taxonomy is not so rigidly

sequential as Bloom's original conception (Seaman, 2011), although Krathwohl (2002) expressly describes the revised taxonomy as hierarchical, with an explanation that the *"mid-points"* of each skill would ascend from simple to complex. (215)

Bloom's Taxonomy, original and revised, has been applied in the subsequent decades to a number of disciplines *inter alia* in the context of content development, assessment and assessment tools, specifying learning objects or outcomes; (Hanna, 2007; Starr, Manaris & Stalvey, 2008; Crowe, Dirks & Wenderoth, 2008; Seaman, 2011) and to promote *"student self-management"* (Athanassiou, McNett & Harvey, 2003, 534). However, it has not been applied as a tool for furthering learning relevant to, or assisting in the gaining of the specific skill set required for, competition mooting.

In the mooting context, the application of either taxonomy presents difficulties with the development and presentation of a persuasive legal argument addressing a complex legal scenario. Such a project is not a single or homogenous cognitive process. The model adopted for the purposes of this article is both mindful of previous debate and the modifications to Bloom's original taxonomy. The authors' adaptive model is depicted in Figure 1.

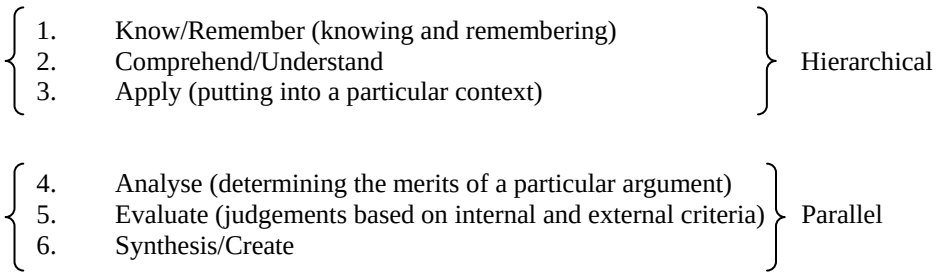

Figure 1: *Bloom/Krathwohl - six levels of cognitive skills and development (adapted)*

Another revision to Bloom's taxonomy resulted in the creation of a taxonomy table (Anderson & Krathwohl, 2001). The original taxonomy was identified as uni-

dimensional, consisting as it did of the six levels of cognitive skill with a range of subcategories in each. The 2001 Revised Taxonomy is constructed as two-dimensional. The six cognitive processes are positioned on one axis, and the form of knowledge the subject of processing (characterised as factual, conceptual, procedural and metacognitive) on the other (Krathwohl, 2002).

In this analysis, the authors identify the relative positioning of the processes in this second dimension, particularly with respect to the framing of questions appropriate to the development of legal argument as mooters ascend the hierarchy. The authors' characterisation of the taxonomy table is based on the following nomenclature and depicted in *Table I*.[iv]

Table I: *Revised Taxonomy Table – 2-Dimensional Matrix (after Krathwohl)*

	Cognitive skills dimension			
Knowledge dimension	**B1 Remember**	**B2 Understand**	**B3 Apply**	**B4+ Analyse, Create and Evaluate**
Factual	B1(F)	B2(F)	B3(F)	B4+(F)
Conceptual	B1(C)	B2(C)	B3(C)	B4+(C)
Procedural	B1(P)	B2(P)	B3(P)	B4+(P)
Metacognitive	B1(M)	B2(M)	B3(M)	B4+(M)

One of the principal criticisms of Bloom-based taxonomies lies in their psychological underpinning of behaviourism (Ferris & Aziz, 2005). This is a view of limited attractiveness as it claims to provide a complete explanation of human intellectual processes. To that extent the authors, similarly to other critics (Furst, 1994; Ferris & Aziz, 2005), do not consider such taxonomies as philosophically convincing. The same dissatisfaction with the behaviourist cast of Bloom-based taxonomies leads the authors to re-assert the highly re-iterative nature of the thought processes involved in developing a complex legal argument, and thus their artistic

credentials. These processes constantly cross boundaries between the identified elements of the taxonomy, while at the same time being deeply imbricated in both affective and psychomotor performance. However, this analysis nonetheless adopts these classifications as a convenient model within which to analyse the intellectual processes involved in high level mooting in order to evaluate observed behaviour and frame appropriate coaching strategies.

Experience of preparing teams for mooting competitions suggests that the upper three levels function in parallel, at least to the extent that *analysis*, *synthesis* and *evaluation* are interrelated, and efficiency requires that all three be utilised in making appropriate decisions about the content of the underlying argument/s presented by the team. Once the threshold has been passed of knowing and understanding the underlying factual matrix and legal principles and reasoning processes, then *analysis*, *synthesis* and *evaluation* become effectively equal partners in the development of complex legal argument. Similarly, applying the law to the new facts takes place in the context of having analysed the law as it is manifested in other, comparable, cases (which requires engaging the analytical level prior to the application level). Preparation for a mooting competition requires the engagement of all these skills. However, while they do not operate discretely, there is a clear developmental path for the cognitive aspects of moot preparation. Lower cognitive skills are emphasized at the beginning of preparation, with the emphasis moving further up the hierarchy as the process continues.

Figure 2 illustrates the relationship between the different forms of cognitive skills identified by Bloom, as relevant to mooting. A key difference in this depiction of the relationship is that the authors approach the taxonomy of the cognitive domain from a three-dimensional perspective.[v] In this context, the three high-level skills are

interrelated, rather than sequential and, as in the legal context generally, are mutually interdependent. They also build equally from the lower three levels, such that a lack of mastery of any of the three lower levels will impact adversely on any of the three higher-level skills.

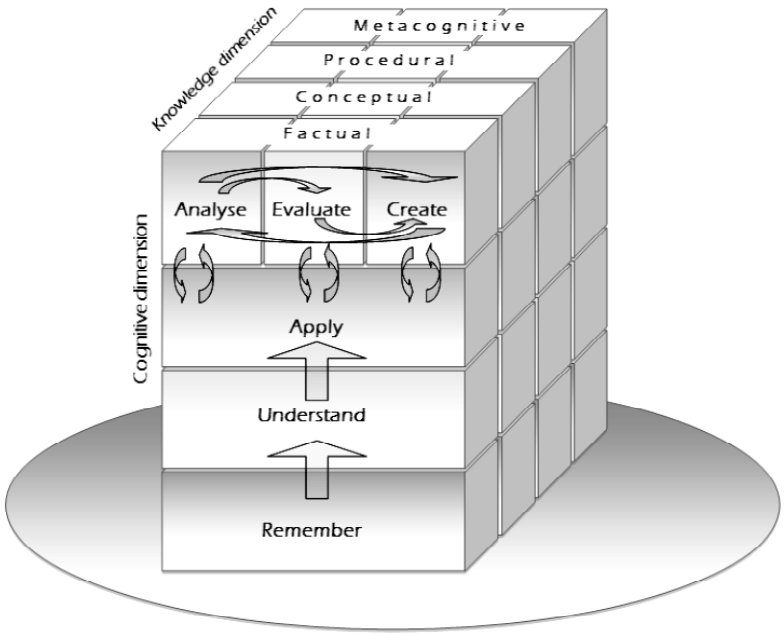

Figure 2: *The cognitive domain for mooting**:** 3-Dimensional Context (after Bloom)*

Cognitive skills in context

The authors' three-dimensional hierarchy of the cognitive skills of mooting is concerned with the intellectual aspects of the development of legal argument presented in both written and oral form. The cognitive goal of preparation for moot competition is the synthesis of a persuasive argument relating to a new set of facts. It is not a single enterprise but depends on the staged development of skills as students and their coach engage with the legal issues. This commences at the first reading of the problem and a tentative formulation of relevant issues, and continues through to the final subtle and nuanced argument. During this process, the mooting team will ascend through the cognitive hierarchy, reaching the upper level (which combines

analysis, *synthesis* and *evaluation*) only once they have effectively assimilated the products of the three lower levels.

The aim of moot training is to arrive at the competition itself fully prepared. This requires a fully developed knowledge of relevant facts, an understanding of the legal issues raised in the problem, comprehension of the extant law governing the resolution of the problem, which is applied to the new scenario, synthesising and evaluating a unique solution based on the proper application of the earlier stages of cognitive skills. It also requires performance skills suitably adapted to successful presentation.

Once the problem is released, the moot team must apply themselves to *knowing* and *remembering* a vast array of facts. These are more than just the actual facts of the problem (B1(F)). *Facts* in this context also include legal facts about doctrinal norms and/or legislation (B1(C)); procedural facts, such as the way in which appropriate identified doctrines function in the legal context (B1(P)); and metacognitively developing knowledge of the thought processes involved in solving the problem (B1(M)). This range of facts can be classified in terms of the knowledge dimension of the 2001 Revised taxonomy table. Most importantly, however, the mooting team goes beyond merely knowing these facts, ascending the cognitive hierarchy by developing an *understanding of* the facts in the context of the legal principles and rules applicable to the problem (B2(F), (C), (P) & (M)).

Because the facts of the problem are novel, the team must *apply* them by fusing the known facts with legal principles (B3(F), (C), (P) & (M)). In developing arguments for both sides of the problem, the team must *analyse* closely the arguments in related cases; *synthesise* (*ie* create) a new product – the argument developed for each party; and *evaluate* each argument, recognising its strengths and weaknesses,

and developing strategies to resist counter arguments (B4+(C), (P), & (M)). We designate the cognitive functions engaged at this point as B4+, to signify that they are not, we argue, hierarchical, but interdependent (although it is still possible to recognise functions which are specifically associated with any of these three component cognitive skills).

Presentation of argument in moot hearings is more than simply reciting a written memorandum, or manipulating the concepts in an intellectual sense. While essentially content driven, submissions must move beyond *"bare propositional knowledge"* towards what Webb describes as *"'practical knowledge'—that is, the knowledge … evident in some skill, proficiency or knack, whether physical and/or mental"* (Webb, 1995, 190). Performance skills at an appropriate level associated with presentation are in themselves not cognitive but features of the *psychomotor* and *affectiv*e domains to be examined by the authors in subsequent articles. However it is important to note, as depicted above, that the development of the final product of moot preparation is *entirely* dependent on the team having maximised their *cognitive* engagement with the mooting problem. Practice is essential to developing the necessary cognitive skills.

Developing cognitive skills

Mooting is a contrived and alien world for law students, who will ordinarily have had little experience of anything that approaches the intensity, exposure and vulnerability involved in making oral submissions. Many law students may have been active in debating at school, and while this may assist in some technical areas (voice, nerves *etc*), the reality of being interrupted repeatedly during your submissions places debating and mooting in quite different areas of experience.

The authors note, from their own experiences and as coaches, that no amount of practice will *ever* replicate the reality of standing at the bar table, trying to make submissions, and simultaneously being subject to penetrating interrogation by the Bench. For members of moot teams, systematic desensitisation to the realities of competition appearance is a key to utilising affective skills in support of the presentation of legal argument (Hopf & Ayres, 1992). As far as possible (and certainly in the latter stages of preparation), mooting practices should be designed to simulate with increasing verisimilitude what mooters will experience in competition. This will require presenting to mock Benches. To reach that point, however, requires mastery of the cognitive skills through a systematically designed practice program.

While the following approach to coaching, designed to enable the development of cognitive skills in the team is predicated on a hierarchical organisation of at least the first three cognitive skills, practices should begin to engage the higher-level skills as soon as possible. How soon engagement with higher-level skills occurs will depend on the team's degree of familiarity with the moot problem. Evaluation of the performance aspects of the process – specifically peer and self evaluation – should also be included as an ongoing feature of coaching, although the role of evaluation will become more significant as the competition approaches.

While the authors' design for coaching is structured such that levels 1-3 are treated independently, this is merely for ease of discussion. The reality is that as soon as preparation begins, *all* of the cognitive levels are engaged to at least some extent. Appropriate coaching is, in effect, a question of shifting the emphasis across the period of preparation from the lower level skills towards the higher-level ones. Thus, early practice sessions are geared to the embedding of knowledge. Without knowledge of the facts, no progress is possible. Soon after the problem is released

and students have developed a working knowledge of the relevant facts, however, practice sessions can begin to tease out their understanding of the facts in their legal context. Soon after that, comparisons with relevant cases can begin the process of application of relevant legal doctrines. At this stage the B4+ processes become a necessary part of taking what otherwise would be a pedestrian and mechanical application towards being a creative and closely analysed response to the problem.

B1: Remember

At the earliest stage of preparation the basic requirement is simple knowledge and retention of facts. Without a perfect knowledge of the facts, even competent moot performance is impossible. Knowledge, however, includes not just facts as ordinarily understood, but facts about classifications (*ie* recognition of the specific roles which legal actors are ascribed in the legal context) and a factual knowledge of legal method. In this context, knowledge of facts will also include knowledge of legal materials, such as legislation and relevant propositions of law regarding the type of legal dispute involved and a reflective component about how students are engaging at this level of the development process. In other words "knowledge" in this context encompasses the four classes of things which are the subject of memory (B1(F), B1(C), B1(P) and B1(M)).

Facts in this broad sense include matters that are purely court procedures, (B1(F)) which must be remembered and executed flawlessly (even though they have no bearing on the substantive problem). For example, establishing the proper mode of address for the members of the Bench (*ie* your Excellency for the International Criminal Court), and using that form in *all* practice runs.

At this level coaching must be undertaken in a structured manner – flexibility can be introduced at higher levels. Early practice sessions should focus on drills

(either solo or with others) designed to embed at a deep level the facts (in the expanded sense) of the moot problem. Individual mooters should be encouraged to run through the moot problem at idle moments, identifying parts of the problem which are less easily remembered (for example) so that extra time can be dedicated to these. The aim of this approach is to embed the facts of the problem to a depth such that the answer to *any* factual question (whether necessary for higher level processes in developing the final argument, or simply in response to questions from the bench) is immediately available to the mooter.

In order to achieve the desired knowledge retention, early practice sessions should be conducted at a basic level. These preliminary sessions should be designed to ensure, as far as practicable, relevant facts are immediately accessible without needing to look up details. The same is true for the sources of this information (*ie* a particular fact can be verified in an evidentiary sense by reference to *"paragraph yy of the Affidavit of X"*). Practice at this level does not require a simulated Bench or courtroom, and can involve: group activities, such as roundtable recitation of the sequence of events; paired mooters quizzing each other; and/or individual mooters reading/cataloguing facts. A detailed chronology of events should be prepared and form the basis for a structured knowledge and understanding of relevant information.

There are specific advantages in holding sessions in which team members question each other. In doing so the questioner, as well as the questioned, are developing their own familiarity with the factual scenario. In framing questions, the mooter will require *active* exposure to the factual matrix surrounding the problem. Similar processes can be replicated as the field of factual information widens (*ie* to include factual material relevant to authorities). Once practice has moved beyond simple knowledge, the emphasis on B1 questions will fall off as higher-level skills are

engaged. B1 skills, however, will continue to be important and will need to be maintained, as answering application or analytical questions requires access to the remembered facts.

B2: Comprehend/Understand

Comprehension is more than mere knowledge as it demonstrates an understanding of facts in context. It involves the ability to organize and compare facts and interpret them in context. While technical application of Bloom suggests that knowledge precedes comprehension, in designing a practice schedule, it is neither necessary nor effective to compartmentalise these two functions. Practicing to increase comprehension can and should, in fact, begin as soon as a working knowledge (as opposed to a comprehensive one) of the moot problem is established.

Practices now should, for example, expand the questioning session to incorporate digressive questions requiring a comparison of the facts in other cases, with emphasis not merely on the factual differences, but the legal significance of any identified differences. That is, the mooters begin to incorporate an understanding of the legal principles relevant to the problem presented (B2(F), (P), (C) & (M)).

At this level the coach should work to evolve the practice sessions into both group and individual drill sessions. Drill sessions are designed to develop comprehension of the broadening range of facts and the interrelationships between them, and the significance of similarities and differences. The questioning sessions retain aspects of those relevant to developing B1 skills, continuing the process of automation of knowledge of facts, core doctrines and applicable legislation. However, in order to expand beyond B1 skills, the sessions should now be designed to require team members to articulate connections between facts and their context (B2(F) &

(C)). Questions should no longer be asked in isolation but structured as sequences of questions, commencing with a B1 question or questions leading to a B2 question. This progressive development of questions is designed to reveal an *understanding* of the elicited fact/s in relation to a known legal principle, and is reflective of the style used when presenting submissions to the Bench.

At this level answers to questions should be framed in language that is appropriate to responding to questions from the Bench. This includes addressing using formal titles (B1(F)). Adopting this answering style reflects and reinforces core B1 skills. For the coach, by insisting on appropriate address even at early stages, he or she is assisting the team members to embed what will be an important aspect of their competition performance. Many mooters have become flustered when being pulled up for addressing the Bench incorrectly, compromising the presentation of their argument. Embedding at an early stage means the mooter will not need to think about it in competition, as it will have become second nature.

B3: Apply

Application moves beyond comprehension as it involves using knowledge in a new context, requiring knowledge of the new situation itself (the factual matrix of the problem and how it may be demonstrated as involving the same legal principles) and acquiring knowledge of the appropriate and permissible principles and methods that may be used to solve the problem. It builds from B2 skills as it also requires knowledge of comparable factual scenarios, which demonstrate how similar or related problems have been solved in the past.

By this stage of the coaching process the framework for the legal arguments presented in the competition will be established and a draft memorandum/memorial will have been prepared. The refinement of both oral and written submissions is

driven by knowledge and comprehension of the problem (B1 and B2); an expanding base of relevant authorities ((B3(C), (P)); analysis of the moot problem (B4+(C), (P))[vi]; and an understanding of the principles that apply to the facts as they emerge from relevant authorities. Successfully undertaking this process requires the development of at least B3 skills.

In order to develop the B3 skill set the coach should structure practice sessions as though the mooter is presenting oral submissions to the Bench on particular aspects of the argument being developed. This introduces an element of performance and simulation of the ambience of competition. Even at this stage the mooter should retain all the formal and procedural aspects of forensic practice (such as appropriate forms of address, language and demeanour) (B1(F)). The coach should continue to encourage the embedding of courtroom etiquette so that in the competition the mooter's performance is natural and instinctive. What also is being developed at this stage is the basic structure of the argument on each particular issue.

The competition preparations should by now have developed to the point where somewhere around four to six issues have crystallised as contentious. Practices should be similarly structured as this will have governed the structure of the memorandum and will also govern the oral submissions. Importantly, the coach should work with the team to ensure that each issue, and the mooter's resolution of it, should be able to be encapsulated in a simple explanation of the issue and its resolution. Practice now moves to a focus on individual submissions. From a practical perspective, all members of a team should practice both junior and senior counsel roles on behalf of both parties. The coach should work to ensure that each team member is able (at the very minimum) to to *provide adequate responses to* questions from the Bench on all

the issues being argued (even if they are not part of that individual's own submissions).

Most importantly, practice questioning sessions should now begin to look at the argument on a particular issue as a whole. These sessions retain aspects of B1 skills serving to continue the process of "automation" of knowledge of facts, core doctrines, applicable legislation, and their comprehension in a limited context. Questions are now structured as more complex sequences, with B1 and B2 questions setting the groundwork for a B3 question. A B3 question will typically require the mooter to address the application of the law to a specific issue in the expectation that understanding of the facts and legal principles are already well developed, and will be embedded in their responses.

B4+: Analysis, Create and Evaluation

Attaining B4 skills will fully equip the mooter for competition performance and, importantly, judging:

> Dialogue between the judge and counsel provides the opportunity for instructors to assess higher level skills of analysis and evaluation rather than lower level skills such as recall of knowledge. (Bentley, 1996, 117)

The interdependence of the three B4+ skills reflects the observations of cognitive science that the differentiation between naïve and expert professional skills –and mooting is the attempt to engender something of the expert in the neophyte - lies not in the mere accumulation of detailed knowledge, but in the quality of its organization, thus allowing for an approach to the moot problem which transcends mere application of a "stored problem schema" to a recognised problem structure (Blasi, 1995, 318).

This is in some ways the most crucial time for the coach, as the final stage, the competition, is beyond their control. This stage of practice engages the three B4+ skills contemporaneously. Practice sessions should now be based around presentation of the whole argument, moving towards rehearsals of the entire presentation (both counsels and covering all issues). Since this is still a work-in-progress, however, questioning should be directed at any arguments not been fully tested, developing what Schön (1983) would describe as *"reflection-in-action"* in the form of the ability to *"respond creatively to a problematic situation while in the midst of that situation"* (Webb ,1995, 198).

There are now a finite number of opportunities to practice and perfect submissions and style while retaining the intuitive flexibility to deal with the unknown. The coach and team members must work together at this level. The team should be analysing the content of the argument and bringing to bear their knowledge of approaches taken in comparable cases. In turn, the coach should be running critical (B4+) questions past counsel during their presentations to expose weaknesses. It is good strategy to include non-speaking mooter/s as members of the practice Bench – responding to arguments presented to the Bench focuses them on high-level aspects of the case, but also gives them a view of mooting which allows them to see other peoples' performance aspects, such as posture, facial expressions and demeanour and providing a basis for them to reflect critically on their own.

The team presentations should now have all the hallmarks of creation/synthesis. That is, they should combine all known information into a *unique* solution. The solution should be based in a set of abstract relationships between fact and law, including legal rules *and* novel construction of arguments where, as should be the case in any well-set problem, no extant rule is determinative. Submissions

should navigate the *"problem space"* (to adopt a term from cognitive science) with a view to providing a legal solution which encompasses *"local"* decisions (about, for example, how specific legal doctrines or cases might be applied to the novel space) in the context of an overarching sensitivity to their role in the global solution (Blasi 1995, 331).

A primary purpose of these later practices is to provide the coach and the team with the opportunity for *evaluation* of the arguments that have been developed. This requires a high level manifestation of analysing existing arguments in cognate, though not wholly co-extensive, situations. It is this interrelationship of evaluation, synthesis and analysis which re-enforces our view that the three higher-level functions do not operate hierarchically, even though they retain their own distinctive characteristics. This is not a situation where the coach's view should necessarily prevail. Everyone should retain an open mind as to how the argument/s will develop. Self-evaluation and peer-evaluation are equally important at this time as everyone's critical evaluation of the current form of arguments is valuable input into this process of *synthesisation* (Vanaspu *et al*, 2009).

This is the time to consider the strategic aspects of the arguments to be presented. This includes determining the order of the submissions, which counsel is to speak first and whether later submissions depend on earlier ones succeeding. At this stage the evaluation is directed not just to the *cognitive* aspects of the argument but will begin to review performance characteristics linked to persuasiveness of the mooter. It is at this time that the *affective and psychomotor domains* as they are observable in presentation will need to be reinforced.

Practice sessions should now, in effect, be full 'rehearsals'. Questions from the practice Bench should be focused on higher level skills (B4+) but should not entirely

abandon B1-B3 processing. At any stage, mooters can and should be asked, for example, to take the Bench to the specific reference where a fact is authoritatively stated in the materials or where a judge sets out a proposition of law being relied on (both B1(F)). Questions that demonstrate *active* knowledge of cases (how the Bench was constituted; was the judge cited in the majority or in dissent), which are also Bl(F) level, should be interspersed with more complex B3 and B4+ questions. As this is now full rehearsal, any lapses in protocol or etiquette should be dealt with by the Bench in character, thereby not breaking the ambience of actual performance.

Conclusion

Many coaches – particularly those with some years' experience of high-level mooting – may have developed an instinctive understanding of the various levels of mental processing which go into developing and presenting a strong legal argument in response to a moot problem. Similarly, they will also have developed through experience some understanding of the inter-relationship between *cognitive*, *psychomoto*r and *affective* domains in the making of excellent oral submissions, without necessarily having a theoretical understanding of those domains.

Coaches also have their own personal advocacy style – some more effective than others. This is paper is not intended to suggest standardisation of coaching to the extent that it intrudes into the style of an individual coach. However, even where coaches have developed an unarticulated sense of the underlying taxonomies, it is a valuable exercise for coaches to reflect on their methods by reference to the underlying theory, and to take the opportunity to refine coaching practices against a model which places all aspects of excellence in moot performance in a rational and coherent space justified by reference to relevant educational theory.

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Notes

[i] While it is noted that other authors consider there is a fourth domain – the *social* domain (for example see Dettmer, P. (2006) New Blooms in Established Fields: Four Domains of Learning and Doing, *Roeper Review* 28(2), pp.70-78) – in the context of competition mooting the authors suggest the *social* aspect has limited (if any) impact and as such will not be considered by them.

[ii] The adoption of sporting metaphors as a general method of modeling "workplace" behaviour has gained considerable traction, (see Hanley, S. (2010) A Sports Metaphor in Career Coaching, *Career Planning and Adult Development Journal*, 26, pp. 96-100) which has special resonance for moot coaching, insofar as it is embedded in a competitive and performance related environment

[iii] Compare the approach described in relation to engineering education, where "[t]*he traditional learning goals of engineering curricula have focused on foundational knowledge, computational skills and their application. That, outcomes stress cognitive domain development … Despite the recognition that attitudinal and behavioural dimensions are critically integrated, the cognitive domain is the focus"*: Vanaspu, L., Stolk, J. and Herta, R. (2009) The Four-Domain Development Diagram: A Guide for Holistic Design of Effective Learning Experiences for the Twenty-First Century Engineer, *Journal of Engineering Education*, 98, pp. 67-81at 68.

[iv] Developed from the State of Minnesota's Language Arts Standards for Grade 12, extracted in Krathwohl, D. (2002) A Revision of Bloom's Taxonomy: An Overview, *Theory into Practice*, 42(4), pp. 212-218 at 216 – see Appendix Figure 4.

[v] This model is not to be confused with the *Confluent Three-Dimensional Taxonomy* proposed by Feezel. See – Feezel, J. (1985) Toward a confluent taxonomy of cognitive, affective, and psychomotor abilities in communication, *Communication Education*, 34(1), pp. 1-11

[vi] This reinforces the authors' position that *application* and *analysis*, at least in the context of competition mooting, do not follow any neat sequential pattern nor do they operate iteratively.